# THE AMERICAN LAW REGISTER

FOUNDED 1852.

UNIVERSITY OF PENNSYLVANIA

DEPARTMENT OF LAW





SUBSCRIPTION PRICE, $3.00 PER ANNUM. SINGLE COPIES, 35 CENTS.

Published Monthly for the Department of Law by DANIEL S. DOREY, at 115 South Sixth Street, Philadelphia, Pa. Address all literary communications to the EDITOR-IN-CHIEF; all business communications to the TREASURER.


TRUSTS; CHARITIES; DESIGNATION OF BENEFICIARIES. In *Staines* v. *Burton et al.*, 53 Pac. 1015 (July 14, 1898), the Supreme Court of Utah was afforded an occasion to decide upon the question of what constitutes a charity. In that case the testator had given certain life estates, with remainders as follows: "After the death of each one, I desire that my executors shall make over to the presiding bishop of the Church of Jesus Christ of Latter-Day Saints the half of my estate, etc. The presiding bishop shall receive it in trust, to expend the annual interest or income, according to his discretion, for the benefit of the members of the Church of Jesus Christ of Latter-Day Saints, whether it be for schools, parks, watering cities, planting forests, acclimatizing foreign plants, or anything else whereby the members may be benefited." The court held that the beneficiaries were sufficiently described, and being for lawful purposes, the trust would be sustained.

The court, speaking through Zane, C. J., referring to the objects of the trust, says: "The terms of the trust did not require the trustee to aid all of them. He might devote all of the income to schools or parks, or to either or any of them, if, in his judgment, by so doing, the members of the church would be benefited most." And it was held that the purposes pointed out were charities within the legal meaning of that word, and whatever discretion was allowed the trustee must be exercised either in favor of the purposes enumerated or others of like nature.

No definition of a charity is attempted by the court but the one suggested by Lord Camden is approved. Lord Camden's definition is, "a gift to a general public use, which extends to the poor as well as to the rich." *Jones* v. *Williams*, Ambler, 652 (1767). It is suggested in the opinion that the Statute 43 Eliz. c. 4, is admitted to be the principal test of what are in law charitable uses. That this statute was not the origin of charitable uses, is conclusively shown in *Vidal* v. *Girard's Executors*, 2 How. (U. S.) 128 (1844). It is, nevertheless, generally adopted by the courts as a guiding star in determining what are charities: Bispham's Equity (5th Ed.), § 119.

As a general rule, where the purposes are not sufficiently outlined, but left rather to the discretion of the trustee, there the trust fails for uncertainty: *Morice* v. *Bishop of Durham*, 9 Ves. 404 (1804); *Livesey* v. *Jones*, 35 Atl. (N. J.) 1064 (1896). But if the purposes are specified even in general terms, and those purposes are charitable, the discretion of the trustee will be controlled to the extent of confining the gift to charities, and the trust will be sustained as in the principal case. The aim of the courts is to ascertain the intention of the creator of the trust. If it be to establish a charity, whether *eo nomine*, or in substance, and be sufficiently indicated, it will be enforced: *Staines* v. *Burton*, *supra*; *Parish of Christ Church* v. *Trustees, Etc.*, 67 Conn. 554 (1896); *Dye* v. *Beaver Creek Church*, 26 S. E. 717 (S. C.) (1896); *In re Darling* [1896], 1 Ch. 50; *In re Macduff* [1896], 2 Ch. 451.

Gifts for the relief of the poor of, or for the relief of members of churches or societies are held to be charitable uses: *Staines* v. *Burton*, *supra*; *Evangelical Association's Appeal*, 35 Pa. 316 (1860); *Conklin* v. *Davis*, 63 Conn. 377 (1893); *Att'y-Gen'l* v. *Old South Society*, 13 Allen (Mass.), 474 (1866); *Duke* v. *Fuller*, 9 N. H. 536 (1838).

---

RELATION OF INNKEEPER AND GUEST; HOTEL; WHAT CONSTITUTES A "GUEST." In *Orchard* v. *Bush* [1898], 2 Q. B. 284, Wills, J., of the Queen's Bench Division, gives an interesting discussion of the conditions necessary to constitute the relation of innkeeper and guest, so as to impose upon the host that special liability which the law has attached to innkeepers. Plaintiff, who lived just outside of Liverpool and was about to return to his home from the town, went to a large Liverpool hotel for supper. A

considerable portion of the hotel's business consisted in the furnishing of meals without sleeping rooms. Plaintiff placed his overcoat in the part of the room where they were ordinarily kept, and, having left the room to speak to the proprietor, returned to find his coat stolen.

On suit against the proprietor of the hotel it was contended for the defence that the relation of innkeeper and guest did not exist, on the ground that plaintiff was not a "traveller" and that his purpose was not to make use of the hotel in its character as an inn, but merely as a restaurant. The Queen's Bench Division, however, thought that proprietor was liable as an innkeeper, Wills, J., saying:

"Taking the narrower view, contended for by counsel for the defendant, of what is a guest, I fail to understand in what sense he was not a guest. The room he went into was the dining-room of the hotel. It is said that, in order to make him a guest, he must be a wayfarer and traveller. The facts are that he was on his way home; he was on his way to the station, by which he travelled home by railway. Why was he not a wayfarer? If he had been riding to his home on horseback along a country road, and between the terminus *a quo* and the terminus *ad quem* he used an inn for the purpose of getting food for himself and his horse, he clearly would be a wayfarer and a guest at the inn. What difference does it make that he was not riding—as 100 years ago he probably would have been—but that he was walking to the railway station in order to take the train, and on the way called at an inn, and was received there and served with such refreshment as he required? But I do not take the more restricted view of what constitutes a guest at an inn. I think a guest is a person who uses the inn, either for a temporary or a more permanent stay, in order to take what the inn can give."

It is well settled that, in order to entitle one to the common law rights and privileges of a guest, he must be a "traveller:" *Calye's Case*, 8 Co. 31 (1684); *Manning* v. *Wells*, 9 Humph. (Tenn.) 746 (1849); *Neal* v. *Wilcox*, 4 Jones, Law (N. C.), 146 (1886). In early times a "traveller" must have come from a distance, since "if a neighbor, who is no traveller, as a friend, at the request of the innholder lodges there, and his goods be stolen, etc., he shall not have an action; for the writ is *ad hospitandos homines, etc., transeuntes, in eisdem, hospitantes,*" *etc.*: *Calye's Case, supra*, Dyer, 226, pl. 9. Modern cases, however, hold that it is not necessary that the guest should have come from a distance. A neighbor may be a guest as well as a person who comes from a foreign country: *Wintermute* v. *Clark*, 5 Sandf. (N.Y.) 242 (1851); *Walling* v. *Potter*, 35 Conn. 183 (1868); *Curtiss* v. *Murphy*, 63 Wis. 6 (1885). However, if the traveller comes to the inn for an immoral purpose, such as that of prostitution, the relationship does not exist, since the proprietor would be justified in refusing admission: *Curtiss* v. *Murphy*, *supra*.

Guests are those only who make use of the inn for the ordinary purposes of rest and refreshment. Thus, a man who takes a room at an inn for the purpose of displaying clocks and watches for sale, is not a guest: *Burgess* v. *Clements*, 4 M. & S. 306 (1815); nor is one who makes use of the inn as a mere depository for his valuables: *Arcade Co.* v. *Wiatt*, 44 Ohio St. 32 (1886). It has been held that the mere fact that a traveller leaves his horse at an inn is sufficient to render him a guest, even though he may lodge in another place: *Mason* v. *Thompson*, 9 Pick. 280 (1830); *Peet* v. *McGraw*, 25 Wend. 653 (1841); *McDaniells* v. *Robinson*, 26 Vt. 316 (1854). But this position has been denied: *Grinnell* v. *Cook*, 3 Hill, 485 (1842); *Thickstum* v. *Howard*, 8 Blachf. (Ind.) 535 (1847); *Hickman* v. *Thomas*, 16 Ala. 666 (1849). See note to *McDaniells* v. *Robinson*, *supra*, where an attempt is made to reconcile the cases. There is authority for the proposition that a person who comes to an inn for the purpose merely of drinking a glass of liquor, is a guest: *Bennett* v. *Mellor*, 5 T. R. 273 (1793); *McDonald* v. *Edgerton*, 5 Barb. (N. Y.) 560 (1849); but in the interpretation of the liquor statute of Massachusetts the contrary was held: *Comm.* v. *Hagan*, 140 Mass. 289 (1885); *Comm.* v. *Moore*, 145 Mass. 244 (1887). Certainly such a person would be a guest under the dictum in *Orchard* v. *Bush*, *supra*, that "A guest is a person who uses the inn either for a temporary or a more permanent stay, in order to take what the inn can give."

The special relationship of innkeeper and guest extends only to those persons whose stay is indefinite, and who are entertained from day to day under an implied contract. If there is an express contract to pay a certain rate for a certain time, the lodger is not a guest, but a boarder, and the special liability ceases. The proprietor of the house may be both an innkeeper and a boarding-house keeper: *Jeffords* v. *Crump*, 12 Phila. 500 (1877); *Vance* v. *Throckmorton*, 5 Bush (Ky.), 41 (1868); *Manning* v. *Wells*, 9 Humph. 746 (1849); *Moore* v. *Long Beach Co.*, 87 Cal. 483 (1891). But if a person comes to an inn in the character of a guest, the mere fixing of the time and price does not of itself disturb the relationship and cause the guest to become a boarder: *Berkshire Co.* v. *Proctor*, 7 Cush. 417 (1851); *McDaniells* v. *Robinson*, 26 Vt. 316 (1854); *Norcross* v. *Norcross*, 53 Me. 163 (1866); *Pinkerton* v. *Woodward*, 33 Cal. 596 (1867); *Hall* v. *Pike*, 100 Mass. 495 (1868); *Pollock* v. *Landis*, 36 Iowa, 651 (1873); *Jalie* v. *Cardinal*, 35 Wisc. 118 (1874); *Lusk* v. *Belote*, 22 Minn. 468 (1876); *Fay* v. *Improvement Co.*, 28 Pac. (Cal.) 943 (1892). But there are authorities to the contrary, and the fact that a special rate has been fixed for a certain time is strong evidence that the lodger is a boarder; *Vance* v. *Throckmorton*, 5 Bush. 41 (1868); *Hirsh* v. *Byers*, 29 Mo. 469 (1860). An army or navy officer, who has no fixed home but spends his time at hotels, is a guest: *Hancock* v. *Rand*, 94 N. Y. (1883); but a railroad conductor, who stops at a hotel located at the termiuus of each of his trips, is a boarder: *Horner* v. *Harvey*, 3 N. Mex. 307 (1884).

A mere restaurant keeper is not burdened with an innkeeper's liability toward those who take their meals at his restaurant: *Doe* v. *Lansing*, 4 Campb. 77 (1814); *People* v. *Jones*, 54 Barb. (N. Y.) 316 (1883); *Carpenter* v. *Taylor*, 1 Hilt. (N. Y.) 193 (1856); *Bonner* v. *Welborn*, 7 Ga. 296 (1849); *Lewis* v. *Hitchcock*, 10 Fed. 4 (1882); *Weltzen* v. *Nicholls* [1894], 1 Q. B. 92; *Schouler*, *Bailments*, 252; nor is even an innkeeper, if the restaurant is located apart from the inn: *Reg.* v. *Rymer*, 2 Q. B. D. 136 (1877). In *Gastenhofer* v. *Clair*, 10 Daly (N. Y.), 265 (1881), a person who took dinner at an inn was held not to be a guest, on the peculiar theory that there was no contract with the innkeeper, *sed contra*: *Orchard* v. *Bush*, *supra*.

The question has often arisen whether the relation of innkeeper and guest exists between a sleeping car company and a passenger on the car. In *Pull. Pal. Car Co.* v. *Lowe*, 28 Neb. 239 (1889), it was held that the sleeping car company was an innkeeper in respect to the passengers' baggage, but the present weight of authority is to the contrary: *Carpenter* v. *R. R.*, 124 N. Y. 53 (1891); *Woodruff Sleep. Car Co.* v. *Diehl*, 84 Ind. 474 (1882); *Pull. Pal. Car Co.* v. *Gavin*, 93 Tenn. 53 (1893); *Pull. Pal. Car Co.* v. *Smith*, 73 Ill. 360 (1894). See 37 Am. Law Register (N. S.), 264.